**H2198 – An Act Relative to the Protection of Wetlands and Water Resources in Chapter 40B Applications**

**Introduction:** The statute intended to encourage the construction of affordable housing, M.G.L. Chapter 40B, s. 20-23 ("Chapter 40B"), has unintentionally steered mixed-income housing projects towards environmentally-sensitive sites near wetlands and water resource areas. H2198 would resolve this tension between environmental protection and affordable housing by restoring the local discretion to enforce wetlands and water resource protection bylaws.

**Background:** Chapter 40B was enacted in 1969 to allow housing developers to obtain waivers from municipal bylaws and regulations that restrict multi-family housing or otherwise make the development of affordable housing uneconomic. In return, developers must agree to set aside a certain percentage of units (typically 25%) as low- or moderate-income housing. If a municipality has not yet achieved the statutory minimum of 10% affordable housing units, any denial of waivers is presumed to be "inconsistent with local needs" and would likely be overturned. The waiver component of the statute is broad and captures all locally-adopted regulations, even those unrelated to density. This means that municipalities must waive wetland and water resource protection bylaws to accommodate Chapter 40B developments, notwithstanding the benefit those bylaws provide in protecting irreplaceable surface water and groundwater resources.

**The Problem:** Environmentally-sensitive land containing wetlands and other water resources is typically inexpensive, because local regulations restrict what can be built there. Chapter 40B developers are incentivized to purchase environmentally-sensitive parcels, because they can obtain waivers from the very same environmental regulations that made the land cheap, obtaining a windfall at the expense of environmental protection.

**The Solution:** H2198 would amend Chapter 40B by preserving local discretion to enforce wetlands or water resources protection bylaws in Chapter 40B developments. Specifically, the amendment shifts the legal presumption to Chapter 40B applicants to prove that a project will still protect the environment if it receives an applicable bylaw waiver. To be eligible for this exemption, bylaws must (1) legitimately protect surface waters and groundwater (2) be subject to Attorney General approval, and (3) be enforced by the local conservation commission.

**WHY THIS MATTERS:** Residential development is the primary source of surface water and groundwater pollution in the Commonwealth. Construction within upland buffer zones to wetlands causes adverse impacts to water quality and quantities, flood storage capacity, storm damage resilience, wildlife habitat and diversity, the ability of wetlands to sequester and store carbon, and climate change resilience. Pollution from stormwater and wastewater systems associated with residential and commercial development contaminates our drinking water and causes algae blooms that choke the ecosystems of our ponds, streams and estuaries. Wetlands provide vital filtration to attenuate these pollutants.

Chapter 40B was designed to break down barriers to affordable housing production, such as exclusionary zoning practices, but it was never intended to weaken environmental laws. There is a material difference between blanket zoning restrictions prohibiting multi-family housing, and regulations that prevent septic systems and other pollution sources (including PFAS) from contaminating surface and ground waters.

H2198 would remove the current financial incentive to locate Chapter 40B projects near environmentally sensitive areas. It would preserve the wetland and water resource protection regulations that local officials have adopted for sound reasons. The amendment would have no effect on the Chapter 40B program; projects would simply be steered towards more appropriate sites.